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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/539,114

02/02/2006

Dietmar Spanke

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BACON & THOMAS, PLLC

625 SLATERS LANE

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ALEXANDRIA, VA 22314-1176

EXAMINER

FRANK, RODNEY T

ART UNIT

PAPER NUMBER

2856

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/539,114	SPANKE, DIETMAR	
	<b>Examiner</b>	<b>Art Unit</b>	
	RODNEY T. FRANK	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 8-17 and 19-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-22 is/are allowed.
- 6) ☒ Claim(s) 8-17 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/17/2010</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 8-17 and 23 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Jackson ET al. (U.S. Patent Application Publication Number 2003/0093519; hereinafter referred to as Jackson). Jackson discloses a tank side monitor includes two processor boards, a main/communication board, containing field communications interface circuitry and interface circuitry, and an optional IS module, containing HART interface circuitry. The two processor boards are link by an optically coupled serial communications bus. The HART circuitry is multiplexed and can be operated by either the Main/Communication board processor or a local processor on the HART IS board. The optional IS module, an extension of the HART IS board, provides options such as an IS 4-20 mA input or output or other IS I/O. The TSM employs a modular approach for hardware and software, whose implementation consists of a number of modules and programs, the first being the Main/Communications board software. Other programs are contained within the HART interface module. Due to the modular approach taken in the hardware design, the software is also modular and operates on two hardware

modules: Main/Communications module software; and HART module software (Please see the abstract).

With respect to claim 8, Jackson discloses a fill-level measuring device for measuring a fill-level of a fill substance in a container, comprising a measuring unit (see paragraph [0025]), which serves to produce a measurement signal dependent on the fill level in the container; a memory (see for example paragraph [0035]), in which parameter sets for different applications are stored (see, for example, paragraph [0057]); and an evaluating unit (see paragraph [0018]), which serves to select a parameter set, and on the basis of the selected parameter set, to derive the fill level from the measurement signal, and to make the derived fill level available for further processing, evaluation and/or display (see paragraph [0057]). While the reference does not explicitly disclose that the memory contains the parameter set/instructions for the device to operate are stored for every possible application in which the fill level measuring device is to be used, the Jackson reference disclose the use of a memory to store instructions for the devices operation. While it is not explicitly stated that every possible instruction is stored, it would be obvious to one of ordinary skill in the art at the time of the invention to store the parameter sets and instructions necessary for the device to function as intended. The device is disclosed to operate based upon a users input in order to perform specific tests. Therefore, it would be obvious to have a full set of all possible parameters for the user to select from, instead of only a partial set of parameters.

With respect to claim 9, the fill-level measuring device as claimed in claim 8, in combination with an on-site interface, via which an operator can input, which parameter set is to be selected is disclosed in claim 12 of the reference.

With respect to claim 10, the fill-level measuring device as claimed in claim 8, in combination with a communication interface, via which can be input, which parameter set is to be selected is disclosed in claim 12 of the reference.

With respect to claim 11, Jackson discloses a method for fill-level measurement using a fill-level measuring device comprising: a measuring unit which serves to produce a measurement signal dependent on the fill level in the container; a memory in which parameter sets for different applications are stored; and an evaluation unit which serves to select a parameter set, and on the basis of the selected parameter set, to derive the fill level from the measurement signal, and to make the derived fill level available for further processing, evaluation and/or display; comprising the steps of: transmitting send-signals and receiving their echo-signals using the measuring unit; and determining the fill level using the evaluating unit by examining the echo signals for distinctive structures, selecting a parameter set on the basis of the structures, and determining the fill level by means of the selected parameter set as disclosed in view of claims 24, and 28-31 of the reference. While it is not explicitly stated that every possible instruction is stored, it would be obvious to one of ordinary skill in the art at the time of the invention to store the parameter sets and instructions necessary for the device to function as intended. The device is disclosed to operate based upon a users input in order to perform specific tests. Therefore, it would be

obvious to have a full set of all possible parameters for the user to select from, instead of only a partial set of parameters.

With respect to claim 12, an arrangement for fill-level measurement using a fill-level measuring device comprising: a measuring unit which serves to produce a measurement signal dependent on the fill level in the container; a memory in which parameter sets for different applications are stored; and an evaluation unit which serves to select a parameter set, and on the basis of the selected parameter set, to derive the fill level from the measurement signal, and to make the derived fill level available for further processing, evaluation and/or display; an apparatus for identifying a present application; and a connection between said apparatus and said evaluating unit exists, via which identifications of said apparatus are available to said evaluating unit as disclosed in paragraph [0057], and in view of claims 24, and 28-31 of the reference. While it is not explicitly stated that every possible instruction is stored, it would be obvious to one of ordinary skill in the art at the time of the invention to store the parameter sets and instructions necessary for the device to function as intended. The device is disclosed to operate based upon a users input in order to perform specific tests. Therefore, it would be obvious to have a full set of all possible parameters for the user to select from, instead of only a partial set of parameters.

With respect to claim 13, a method for fill-level measurement using a fill-level measuring device, comprising: a measuring unit which serves to produce a measurement signal dependent on the fill level in the container; a memory in which parameter sets for different applications are stored; and an evaluation unit which serves

to select a parameter set, and on the basis of the selected parameter set, to derive the fill level from the measurement signal, and to make the derived fill level available for further processing, evaluation and/or display; comprising the step of recognizing, on the basis of the measurement signals, events which make a changing of the parameter set necessary as disclosed in paragraph [0008].

With respect to claims 14, the method as claimed in claim 11, wherein the identification of which application is present is output for plausibility review or as input for other devices is disclosed in paragraph [0057].

With respect to claims 15, the method as claimed in claim 13, wherein the identification of which application is present is output for plausibility review or as input for other devices is disclosed in paragraph [0057].

With respect to claims 16 and 17, the definition of commissioning, according to Webster is to order to be made <for example, *commissioned* a portrait>. Therefore, utilizing the same logic as discussed earlier with respect to claim 8, while not explicitly disclosed as such, it would be obvious to have the device shipped out ready to use from the factory. Therefore, it would be obvious to one of ordinary skill in the art to have the device programmed with parameters directly from the manufacturer so that the device can perform at its full potential from its initial use by a user.

With respect to claim 23, the device of claim 8, further including an interface, is disclosed as the device is disclosed to utilize a graphic user interface.

***Allowable Subject Matter***

3. Claims 19-22 are allowed.

4. The following is a statement of reasons for the indication of allowable subject matter:

The measuring device which includes preprocessing means for conditioning the measurement signal generated in said measurement device, in combination with all other limitations of the independent claim is not disclosed nor deemed obvious in view of the prior art of record.

### ***Response to Arguments***

5. Applicant's arguments filed 17 December 2010 have been fully considered but they are not persuasive. The applicant argues the examiners rejection by stating:

"The procedure outline above by the examiner does not amount to a "parameter set selection." Adjusting the control variables, paragraph [0018], is not the same as selecting a parameter set.  
The examiner is urged to again reconsider the above rejection and find claims 8 - 17 and new claim 23 also allowed. "

This is not found as persuasive. The examiner, in order to provide a thorough and as compact a prosecution as possible, has provided detailed reasoning as to why the cited reference is deemed to disclose the presently claimed device. The examiner explained the "parameter set selection" from the evaluation unit as follows:

The examiner would like to note that the applicant only argues the evaluating unit with respect to claims 8, 11, 12, and 13. Therefore, the applicant does not argue the reference with respect to the other claim limitations and thus would be in agreement with the other claims limitations of claims 8, 11, 12, and 13 being either disclosed or deemed obvious in view of the Jackson reference. The applicant argues that it is not clear from the reference, and specifically from paragraph [0018]. The claim calls for an evaluation unit which selects a parameter set and on the basis of the selected parameter set, derives fill level information from the measurement signal and makes the derived fill level available for further processing, evaluation, and/or display. With this in mind, paragraph [0018] discloses that analog and digital outputs are connected to a PC with a graphical user interface that provides various conditions, readings, and results of calculations based on the readings to be displayed. This section alone describes the PC as an evaluating unit and results of calculations being displayed would indicate that there is an evaluation that takes place with the PC. The applicant specifically argues

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that the evaluation unit is not disclosed to select a parameter set. The examiner respectfully disagrees. In the same paragraph [0018], the reference discloses that the PC monitors input signals representing condition variables, performs calculations using data derived from the input signals, and performs supervisory functions that may include adjustment of control variable. If the device is adjusting control variables, then the parameters under which the device is operating is now being changed or selected to be at specific values which are selected by the PC, the PC being the evaluation unit. Therefore, the examiner feels the Jackson reference does an adequate job of disclosing the claimed evaluation unit as claimed. For at least these reason, the applicant's argument is not deemed to be persuasive.

With the examiner providing reasoning and specific explanation as to why the "parameter set selection" from the evaluation unit is disclosed, merely making a conclusionary statement that "Adjusting the control variables, paragraph [0018], is not the same as selecting a parameter set." Without providing any rationale or reasoning to why the examiners logic/reasoning is incorrect is not a persuasive argument. It would be similar to the examiner providing a rejection by stating that the evaluating unit is described in paragraph [0018] and if questioned as to why the unit is deemed disclosed, an answer of "because it's the same thing" were provided as rationale, with no further explanation of how it is disclosed or why it is deemed to be obviously the same. With this as the only rationale provided, the examiner deems to previous rejection to still be a valid one. New claim 23, which depends from rejected claim 8, simply adds an interface to the device which is clearly disclosed and illustrated in figure 1 (item 7). For at least these reasons, the previous rejection of the claims has been maintained.

### ***Conclusion***

6. This is a request for continued examination of applicant's Application No.

10/539,114. All claims are drawn to the same invention claimed in the earlier

application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application.

Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RODNEY T. FRANK whose telephone number is (571)272-2193. The examiner can normally be reached on M-F 9-5:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hezron Williams/  
Supervisory Patent Examiner, Art  
Unit 2856

/R. T. F./  
Examiner, Art Unit 2856  
January 18, 2011